No. 05-____

IN THE
Supreme Court Of The United States

CARLTON B. JONES
Petitioner

v.

MABEL S. JONES
Respondent

On Petition for A Writ of Certiorari
To the United States Court Of Appeals
For the Fourth Circuit

CORRECTED PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by failing to consider if the facts, taken in the light most favorable to the non-moving party, supported Officer Jones' defense of qualified immunity as a matter of law as presented in his motion for summary judgment.

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PETITION FOR A WRIT OF CERTIORARI

Carlton Jones petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

CITATION OF OPINIONS BELOW

Neither the judgment of the Fourth Circuit (App., infra, 1a) nor the opinion of the District Court (App., infra, 3a) is reported.

JURISDICTION

The order of the Fourth Circuit dismissing the appeal was entered on September 2, 2005. The denial of Petitioners' motion for rehearing en banc was entered on September 27, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. §1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a

judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Dr. Mabel Jones, brought this action based on the death of her son, Prince Jones, Jr. and initially filed suit in the United States District Court for the District of Columbia naming as defendants two Prince George's County police officers, Cpl. Carlton Jones and Sgt. Alexandre Bailey, Prince George's County (hereinafter "the County") and John Farrell, the former Chief of Police. Dr. Jones contends that the death of her son was a violation of his civil rights and other torts asserting these claims through a survival action and also a right of recovery pursuant to the wrongful death act of the Commonwealth of Virginia.

A motion to dismiss on the basis of improper venue was denied because the allegation that a conspiracy to violate the decedent's rights occurred, in part, in the District of Columbia. At the conclusion of discovery, a motion for summary judgment on behalf of all defendants as to all claims was filed. The trial court granted summary judgment on the conspiracy claim and transferred the case to the United States District Court for the District of Maryland. It deferred to that court a ruling on the remaining issues raised by the motion for summary judgment.

The United States District Court for the District of Maryland considered the remaining claims and granted judgment to Sgt. Bailey, Chief Farrell and the County. It denied motion as to Cpl. Jones concluding that because the officer couldn't recall the moments immediately surrounding the shooting summary judgment was inappropriate. The officer appealed this ruling as the motion was based, in part, on the assertion of qualified immunity.

Dr. Jones moved to dismiss the appeal on the basis that a genuine issue of material fact existed making an interlocutory review of a denial of summary judgment on the grounds of

qualified immunity was inappropriate. The Fourth Circuit granted this motion and dismissed the appeal without further comment.

The United States District Court for the District of Maryland had jurisdiction over this action pursuant to 28 U.S.C. §1331 as the Complaint alleged a violation of 42 U.S.C. §1983. The United States Court of Appeals for the Fourth Circuit has jurisdiction over this appeal based upon 28 U.S.C. §1291. Officer Jones filed a motion for summary judgment based, in part, on qualified immunity that was denied on April 28, 2005. The appeal from that order was filed on May 16, 2005. Although not all issues were resolved in the trial court, an interlocutory appeal is permitted on the issue of the denial of qualified immunity under the authority of *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct 2806, 2818 (1985).

Statement Of The Facts

This case results from a police-involved shooting on September 1, 2000, in Fairfax County, Virginia. Dr. Jones has brought this lawsuit as the personal representative of her deceased son. JA 10.[1] At the time of this incident, Cpl. Carlton Jones and Sgt. Alexandre Bailey were employed by the Prince George's County Police Department. JA 10-11. John Farrell was the Chief of Police. JA 11. Cpl. Jones and Sgt. Bailey were assigned to a team that handled narcotic investigations as well as assisting other investigative sections of the district. JA 26, 167-68.

On or about June 16, 2000, a Prince George's County police officer's gun was stolen and information was developed that a Darryl Gilchrist currently possessed it. JA 174-75, 177. It was also known that this individual assaulted officers with vehicles on two separate occasions during narcotics-related investigations. JA 56-57, 175-76, 197-99. Mr. Gilchrist was know to drive a black Jeep Cherokee and to have associated with a Chenier Hartwell. JA 53, 56-57, 65, 171-73. Mr. Hartwell was alleged to have participated with Mr. Gilchrist in narcotics transactions, an armed robbery and been a passenger in the vehicle on one occasion when

[1] "JA" refers to the joint appendix that was filed by the parties in the Fourth Circuit prior to the dismissal of the appeal.

Mr. Gilchrist attempted to run over an officer. JA 53-57, 171-72, 190-91, 197.

A determination was made to locate Mr. Gilchrist's residence and execute a search warrant in an attempt to recover the weapon. JA 47-48, 63-64. Cpl. Jones and Sgt. Bailey had been advised that Mr. Gilchrist frequents an area near Kennedy Street in the District of Columbia and that Mr. Hartwell was living at 5708 16th Avenue, Hyattsville (Cypress Creek Apartments). JA 39-41, 70-71, 200. On September 1, 2000, Cpl. Jones was conducting surveillance in an attempt to locate Mr. Gilchrist on Kennedy Street. JA 36, 47-48, 67, 192-93.

While in the District, Cpl. Jones saw a black Jeep Cherokee, similar to Mr. Gilchrist's, with Pennsylvania tags and writes down the tag number. JA 67-69. After losing sight of the vehicle, the officer goes to Mr. Hartwell's suspected address in Cypress Creek Apartments and sees the same vehicle with Pennsylvania tags. JA 67, 70-71, 76-78.

These officers follow the vehicle through the District and into Virginia where Sgt. Bailey missed an exit and is separated from Cpl. Jones and the Jeep. JA 93-95, 97-98, 186-87. The Jeep makes a U-turn and uses a service road to enter a neighborhood and Cpl. Jones followed. JA 100. The officer arrives at an intersection and sees the silhouette of a Jeep backed into a driveway off to the left. JA 101. He turns left into the street and, after passing the driveway where the Jeep is located, its lights come on and the Jeep drives past Cpl. Jones. *Id.* The officer begins to make a three-point turn but the Jeep backs up to his door and the driver[2] exits his vehicle and runs toward Cpl. Jones. JA 101-02, 112-13. Cpl. Jones pulls his service weapon and says, "Police. Get back in the car." and Prince Jones returns to the vehicle and begins to drive away. *Id.*

The officer begins to secure his weapon, hears tires spinning and sees the Jeep coming towards him. JA 102-03, 129-30. The Jeep strikes Cpl. Jones' vehicle at the driver's door then pulls forward. *Id.*; JA 222. The vehicle's engine revs and smoke

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[2] The driver was actually Prince Jones although Cpl. Jones did not learn his identity until after the shooting. *See* JA 116-18, 232.

comes from the tires as Mr. Jones backs up and rams the officer's vehicle a second time. JA 102-03. Cpl. Jones attempts to get out of his seat belt or place his vehicle in gear but is unable to prior to being rammed. JA 102-03; 132-34.

When the Jeep began accelerating backwards a second time, Cpl. Jones discharged his weapon sixteen times. JA 141-42. All shots were fired as the vehicle was approaching the officer and at point of impact. *Id.*; JA 103, 148, 153, 231, 234. After the shots were fired, Mr. Jones drove away toward the intersection and turns left on Beechwood Lane. JA 148, 163-64, 231-32. There were no shots fired as Mr. Jones drove away. JA 148, 231, 234. Cpl. Jones drives to the intersection, calls 911 and tells the dispatcher that he shot Chenier Hartwell. JA 116-18, 232.[3] Mr. Jones died as a result of the injuries sustained. JA 13.

REASONS FOR GRANTING THE WRIT

There is currently a divergence in the manner that the circuit courts approach appeals based on qualified immunity and guidance from the Supreme Court is required to ensure uniformity. The inconsistency in the approaches was recognized in *Cunningham v. City of Wenatchee*, 345 F.3d 802, 808 (9th Cir. 2003), wherein the Ninth Circuit stated "[a]s Johnson pointed out, various courts of appeals have held different views about the immediate appealability of the claims of public officials who assert qualified immunity defenses. Notwithstanding the decisions of Johnson and Behrens, the courts still seem to be in somewhat disarray as to the proper rules to follow."

Some of the circuits have adopted an approach similar to a district court's review initially of a motion for summary judgment, i.e. whether the facts and inferences taken in the light most favorable to the non-movent establish a constitutional violation.

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[3] Cpl. Jones saw the driver when got out of the jeep and approached his car. He describes him as a "tall, slim male". JA 116-17. Based on the general description of the driver being tall and slender, which is closer to the physical description of Mr. Hartwell than Mr. Gilchrist, Cpl. Jones made an assumption that he shot at Mr. Hartwell. JA 117-18.

The Eighth Circuit in *Walker v. City of Pine Bluff*, 414 F.3d 989 (8th Cir. 2005), described this approach clearly in stating

> [w]hen the district court has denied qualified immunity on the ground that material facts are disputed, as in this case, we may not review the sufficiency of any evidence that is disputed. Instead, we view the facts in the light most favorable to plaintiff and determine whether those facts establish that defendant infringed plaintiff's clearly established constitutional or statutory rights.

Id. at 991; *See also Bankhead v. Knickrehm*, 360 F.3d 839, 843 (8th Cir. 2004)("[a] denial of summary judgment on the ground of qualified immunity may be reviewed on interlocutory appeal when the issue presented is a purely legal one: whether the facts alleged [or shown by the summary-judgment record] . . . support a claim of violation of clearly established law.").

This procedure has also been adopted by the First and Ninth Circuits. The court in *Cunningham* explained that "[i]n following the admonition in Mitchell, we assume the facts shown by Cunningham, the nonmoving party, as being true for the purpose of deciding the abstract legal question governing qualified immunity." *Cunningham v. City of Wenatchee*, 345 F.3d at 809; *See also Johnson v. County of L.A.*, 340 F.3d 787, 791 n1 (9th Cir. 2003)(".. .we have jurisdiction over interlocutory appeals that concern qualified immunity even when "the determination of qualified immunity depends upon disputed issues of material fact" so long as 'we assume the version of the material facts asserted by the non-moving party to be correct.'"); *Rivera-Jimenez v. Pierluisi*, 362 F.3d 87, 95 (1st Cir. 2004)("Since 'pre-trial qualified immunity decisions are immediately appealable as collateral orders when the immunity claim presents a legal issue that can be decided without considering the correctness of the plaintiff's version of the facts,' we cannot exercise jurisdiction over this part of the qualified immunity analysis.").

Another group of circuits, find only those facts determined by the district court can be considered on review of a denial of

qualified immunity. In *Rivas v. City of Passaic*, 365 F.3d 181, 192 (3d Cir. 2004), the Third Circuit stated

> We recently announced that we understood Johnson to mean that, "if a defendant in a constitutional tort case moves for summary judgment based on qualified immunity and the district court denies the motion, we lack jurisdiction to consider whether the district court correctly identified the set of facts that the summary judgment record is sufficient to prove; but we possess jurisdiction to review whether the set of facts identified by the district court is sufficient to establish a violation of a clearly established constitutional right."

See also *Simms v. Bruce*, 104 Fed.Appx. 853, 854-55 (4th Cir. 2004).

The latter approach threatens the continued viability of any review from denials of qualified immunity. In denying qualified immunity on motions, the trial court must conclude that the conduct at issue either amounts to a constitutional violation or that a dispute as to a material fact exists. A decision not to review the latter cases, and accept the trial court's judgment regarding the existence of this dispute, frustrates the *Mitchell* decision's recognition that qualified immunity is

> an entitlement not to stand trial or face the other burdens of litigation, conditioned on the resolution of the essentially legal question whether the conduct of which the plaintiff complains violated clearly established law. The entitlement is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial.

Mitchell v. Forsyth, at 526, 105 S.Ct at 2815. Interestingly, the Fourth Circuit understood this peril in *Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir. 2004), wherein it stated

> [u]nder the collateral order doctrine, a district court order is final, 'even if it does not terminate proceedings in the district court, so long as it conclusively determines the disputed question, resolves an important issue completely separate from the merits of the action, and would be effectively unreviewable on appeal from a final judgment.'

(citations omitted).

The trial court has created a substantial record of its findings of fact for an appellate court to review. At the critical moments, it concluded that the following occurred:

> The Jeep's driver then began to drive away, leading Officer Jones to believe the encounter had ended and that the driver was leaving. Officer Jones then heard tires spinning and saw the Jeep backing towards him. The Jeep struck Officer Jones's SUV, and "rocked" him around inside his SUV. The Jeep's driver then pulled the Jeep farther forward than he bad been before the first collision, raced its engine and spun its wheels in reverse causing smoke to come from the Jeep's tires, and struck Officer Jones's SUV a second time. The second collision was apparently stronger than the first one.
>
> After the black Jeep struck his SUV a second time, Officer Jones fired 16 shots from his firearm into the back of the Jeep, hitting the Jeep's driver five times. After the shooting, the Jeep's driver drove away. No shots were fired as the Jeep drove away Officer Jones drove to an intersection, called 911, and told the dispatcher he had just shot Hartwell. In fact, Officer Jones had shot the decedent Prince Carmen Jones, Jr., who later died of his injuries.

App., infra, 6a-7a.

However, the court denied the motion for summary judgment because Officer Jones could not recall his actions from the time the vehicle began racing back towards him the second time until the conclusion of his shots, the court found that "it is unclear from the summary judgment record whether his perceptions that the decedent's vehicle posed a danger were observed immediately prior to the shooting, or some time thereafter. . ." App., infra, 13a. It is this latter conclusion, and the determination of the Fourth Circuit not to consider the facts standing alone, that denies Officer Jones the opportunity to have a meaningful review of the district court's qualified immunity decision.

The determination on the entitlement to qualified immunity is a two-step process involving an initial decision of whether the facts, viewed in favor of the individual injured, show the violation of a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 200-01, 121 S. Ct. 2151, 2155-56 (2001). Should the facts establish such a violation, the court must then conclude whether the right was "clearly established" at the time of the occurrence. This conclusion must be based "in light of the specific context of the case, not as a broad general proposition." *Id.* As recognized by the Fourth Circuit in *Pritchett v. Alford*, 973 F.2d 307, 312 (4th Cir. 1992),

> . . . the proper focus is not upon the right at its most general or abstract level, but at the level of its application to the specific conduct being challenged. And the determination whether a reasonable person in the officer's position would have known that his conduct would violate the right at issue must be made *on the basis of information actually possessed by the officer at the critical time, or that was then reasonably available to him*, and in light of any exigencies of time and circumstance that reasonably may have affected the officer's perceptions.

(citations omitted)(emphasis added); *See also Parrish v. Cleveland*, 372 F.3d 294, 301-02 (4th Cir. 2004).

> The tolerance thus accorded by the qualified immunity defense to "good faith" mistakes of judgment traceable to unsettled law, or faulty information, or contextual exigencies, is deliberately designed to give protection to "all but the plainly incompetent or those who knowingly violate the law," in order to avoid undue inhibitions in the performance of official duties.

Pritchett v. Alford, at 313.

Simply because a trial court denies a motion for summary judgment based upon the existence of a dispute of a material fact does not make the conclusion nonappealable. *Behrens v. Pelletier*, 516 U.S. 299, 312-13, 116 S.Ct 834, 842 (1996). A party is entitled "to claim on appeal that all of the conduct which the District Court deemed sufficiently supported for purposes of summary judgment met the *Harlow* standard of 'objective legal reasonableness'" and, thus, qualified immunity was appropriate. *Id.* at 313, 116 S.Ct at 842. In *Simms v. Bruce*, 104 Fed.Appx. 853, 854-55 (4th Cir. 2004), the Fourth Circuit explained its position in regard to an appeal on qualified immunity that "we have no jurisdiction to quarrel with the district court's preliminary task of constructing the record in the light most favorable to the plaintiff. . . .our task is limited to asking whether the facts, as recited by the district court, show the defendants violated clearly established law."

In the instant appeal Cpl. Jones does not, and cannot, dispute the facts as constructed by the trial court. The officer agrees that the vehicle he was in was repeatedly rammed by Prince Jones' vehicle and that the violence of the assault appeared to be escalating. The *information actually possessed by the officer at the critical time, or that was then reasonably available to him* were the facts determined and recited by the trial court. It is on these facts that Cpl. Jones claims entitlement to qualified immunity.

The trial court's focus upon when the officer perceived the danger posed by the vehicle is misguided. An officer's subjective conclusion of the necessity to use deadly force has been stripped from the qualified immunity consideration. The Supreme Court stated in *Mitchell*, that it

> reconsidered its ruling on qualified immunity in light of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), in which this Court purged qualified immunity doctrine of its subjective components and held that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

Mitchell v. Forsyth, at 517, 105 S.Ct at 2810 (*quoting Harlow v. Fitzgerald*, at 818, 102 S.Ct 2727, 2738).

The failure to consider the facts, independent of the district court's inferences concerning the officer's perceptions, reduces appellate review to correcting only gross errors of law. Such a position prevents any meaningful review and deprives Officer Jones of his right to an interlocutory appeal on the issue of qualified immunity.

CONCLUSION

For the forgoing reasons, Petitioner Carlton Jones requests this Honorable Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 27, 2005

No. 05—1554
CA--04—3044—AW

MABEL S. JONES, individually, as the next best friend of and Personal Representative of the Estate of Prince Carmen Jones, Jr.

Plaintiff — Appellee

and

CANDACE JACKSON, mother, and next friend, and individually and as co-legal custodian of N.J., a minor

Intervenor/Plaintiff — Appellee

v.

CARLTON B. JONES, Officer, Prince George's County Police Department in both his official and individual capacities

Defendant — Appellant

and

PRINCE GEORGE'S COUNTY, MARYLAND; JOHN S. FARRELL, Chief of Police, Prince George's County Police Department in both his official and individual capacities; ALEXANDRE BAILEY, Sergeant, Prince George's County Police Department in both his official and individual capacities

Defendants

On Petition for Rehearing En Banc

The appellant's petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en banc is denied.

Entered for a panel composed of Judge Wilkinson, Judge Luttig, and Judge King.

For the Court

/s/ Patricia S. Connor CLERK

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CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
September 2, 2005

No. 05—1554
CA—04—3044—AW

MABEL S. JONES, individually, as the next best friend of and Personal Representative of the Estate of Prince Carmen Jones, Jr.

Plaintiff — Appellee

and

CANDACE JACKSON, mother, and next friend, and individually and as co-legal custodian of N.J., a minor

Intervenor/Plaintiff — Appellee

v.

CARLTON B. JONES, Officer, Prince George's County Police Department in both his official and individual capacities

Defendant — Appellant

and

PRINCE GEORGE'S COUNTY, MARYLAND; JOHN S. FARRELL, Chief of Police, Prince George's County Police Department in both his official and individual capacities; ALEXANDRE BAILEY, Sergeant, Prince George's County Police Department in both his official and individual capacities

Defendants

ORDER

The Appellee/Cross—Appellant has filed a motion to dismiss, and the Appellant/Cross—Appellee has filed a response.

The Court grants the motion.

Entered at the direction of Judge Luttig with the concurrence of Judge Wilkinson and Judge King.

For the Court

/s/ Patricia S. Connor CLERK

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CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

MABEL S. JONES, individually, as the next best friend of and Personal Representative of the Estate of Prince Carmen Jones, Sr.,

Plaintiff,

v. Civil Action No. AW-04-3044

CANDACE JACKSON, mother, and next friend, and individually and as co-legal custodian of Nina Amayye Eden CIII Jones, a minor; PRINCE CARMEN JONES, SR., co-legal custodian of Nina Antayye Edden Chi Jones, a minor,

Plaintiffs-Intervenors,

v.

PRINCE GEORGE'S COUNTY, MD, *et al.*,

Defendants.

MEMORANDUM OPINION

This 42 U.S.C. §1983 action arises out of a shooting by a police officer of the Prince George's County Police Department ("PGCPD") that led to the untimely death of Prince Carmen Jones, Jr. ("the decedent"). Previously, Plaintiff Mabel S. Jones ("Plaintiff"), as the natural mother and personal representative of the decedent's Estate, filed a complaint against Defendants, two PGCPD police officers, Alexandre Bailey ("Officer Bailey and Canton Jones ("Officer Jones"), Prince George's County, Maryland ("PG County"), and former PG County Chief of Police John Farrell ("Chief Farrell") (collectively, "Defendants") in the United States District Court for the District of Columbia.

Following the granting of a partial summary judgment in favor of Defendants, this action was transferred to this Court pursuant to 28 USC. §1404(a). As such, Plaintiff now brings her remaining claims of excessive force, Monell claims, and various state tort actions against Defendants in this Court.

Currently pending before this Court is Defendants' Motion for Summary Judgment [93].[1] The Court has reviewed the pleadings and applicable law and has determined that a hearing is unnecessary. See Local Rule 105(6) (D. Md. 2004). For the following reasons, Defendants' Motion for Summary Judgment is granted-in-part and denied-in-part.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

The following facts are taken in the light most favorable to the non-movant. On June 16, 2000, a PG County police officer's firearm was stolen. The PGCPD suspected that Darryl Gilchrest ("Gilchrest") possessed the stolen weapon, and also suspected that Gilchrest twice assaulted police officers with sport utility vehicles ("SUVs"), using a black Jeep Cherokee during the first alleged assault and a Red Dodge Durango during the second alleged assault. The PGCPD identified Chernier Hartwell ("Hartwell") as a passenger in the Jeep Cherokee during the first alleged assault, and had information that Gilchrest and Hartwell had allegedly robbed a confidential informant at gunpoint. The PGCPD also suspected that Gilchrest and Hartwell were both engaged in drug trafficking.

In an attempt to recover the stolen gun, the PGCPD decided to obtain a search warrant for Gilchrest's residence. The PGCPD, however, was unaware of Gilchrest's actual residence, and the PGCPD needed this information to complete the warrant application.

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[1] With regard to Defendants' Motion for Summary Judgment D.C. District Court only entered judgment with respect to Plaintiffs claims for civil conspiracy and stalking. Plaintiffs remaining claims were transferred to this Court. Therefore, this Court will entertain Defendants' Motion for Summary Judgment only with respect to the remaining undecided claims.

In August and September 2000, Officers Jones and Bailey were assigned to the PGCPD District I Narcotics Enforcement Team. On August 31, 2000, a confidential informant told the PGCPD that Gilchrest was known to frequent the area of 5th and Kennedy Streets in the District of Columbia. In response to the informant's tip, Officers Jones and Bailey began surveillance activities in the District of Columbia during the early morning hours of September 1, 2000, and later in Maryland and Virginia, in an attempt to ascertain Gilchrest's actual residence.

During surveillance in the area of 5th and Kennedy Streets, Officer Jones observed a black Jeep similar to the one Gilchrest was known to drive, with Pennsylvania tags. Officer Jones lost sight of the Jeep. After a period of continued surveillance in the 5th and Kennedy Streets area, Officer Jones radioed Officer Bailey and then proceeded to leave the District of Columbia, on route to the suspected address of Hartwell at the Cyprus Creek Apartments in Hyattsville, Maryland. Shortly after his arrival, Officer Jones noticed the same black Jeep that he had previously seen in the District of Columbia drive into the Cyprus Creek Apartments. Despite a brief glimpse of the black Jeep and its driver, Officer Jones was unable to determine the identity of the driver due to poor lighting. Officer Jones then proceeded back to the PCCPD station.

Some time thereafter, while driving back to the PGCPD station, Officer Bailey observed the black Jeep that Carlton Jones had seen earlier in the District of Columbia and in Maryland. Bailey notified Carlton Jones that he spotted the vehicle, that he was following it into Maryland, and he requested that Carlton Jones rejoin the surveillance. As Carlton Jones rejoined the surveillance in the District of Columbia, he and Bailey followed the jeep into Virginia. At no time during the surveillance did either Officer Jones on Officer Bailey know that the Jeep's driver was actually the decedent.

Officers Bailey and Jones followed the Jeep into Virginia. Officer Bailey, however, lost sight of the Jeep when he missed the

exit off Route 50 taken by the Jeep, and instead drove onto I-395.[2] Officer Jones, on the other hand, continued the surveillance by following the black Jeep into a residential neighborhood in Virginia. During Officer Jones's surveillance, the Jeep pulled out of a homeowner's driveway, and passed Officer Jones, who was traveling in the opposite direction on the residential street. Officer Jones proceeded to make a three-point turn, but prior to completion, the Jeep backed up to Officer Jones's driver side door.[3] The Jeep's driver then began to drive away, leading Officer Jones to believe the encounter had ended and that the driver was leaving. Officer Jones then heard tires spinning and saw the Jeep backing towards him. The Jeep struck Officer Jones's SUV, and "rocked" him around inside his SUV. The Jeep's driver then pulled the Jeep farther forward than he had been before the first collision, raced its engine and spun its wheels in reverse causing smoke to come from the Jeep's tires, and struck Officer Jones's SUV a second time. The second collision was apparently stronger than the first one.

After the black Jeep struck his SUV a second time, Officer Jones fired 16 shots from his firearm into the back of the Jeep, hitting the Jeep's driver five times. After the shooting, the Jeep's driver drove away. No shots were fired as the Jeep drove away. Officer Jones drove to an intersection, called 911, and told the dispatcher he bad just shot Hartwell. In fact, Officer Jones had shot

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[2] Plaintiff asserts that this fact is in dispute because Bailey informed Carlton Jones that he was right behind him when they got onto Route 50. Like the D.C. District Court, this Court finds that Plaintiffs assertion is of little significance because it does not contradict the Defendants' assertion. Nevertheless, Plaintiff admits that "Bailey was not at the scene of the shooting and did not know about the shooting until after it occurred," which suggests that Bailey was not right behind Carlton Jones or even in the immediate vicinity when Carlton Jones shot decedent.

[3] Disputed issues of fact exist regarding whether, after backing the Jeep up to Carlton Jones's driver side door, decedent exited the Jeep and ran toward Carlton Jones, and, if so, whether Carlton Jones identified himself as a police officer and warned decedent to get back into the vehicle. However, neither panty disputes that Carlton Jones pulled his firearm on the decedent prior to any ramming occurring.

the decedent, Prince Carmen Jones, Jr., who later died of his injuries.

II. Procedural History

On December 5,2000, Plaintiff filed a complaint against numerous Defendants in the United States District Court for the District of Columbia ("D.C. District Court"). Plaintiff alleged federal claims of excessive force and deprivation of the decedent's constitutional rights under 42 U.S.C. §1983 and state claims under the Virginia Wrongful Death Act and Maryland Survival Act[4] for assault and battery, negligent training and supervision, and intentional and negligent infliction of emotional distress.

Defendants flied various Motions to Dismiss alleging, in part that venue was not proper in the District of Columbia, and accordingly that the D.C. District Court lacked personal jurisdiction over Defendants. Judge Richard Roberts, of the D.C. District Court denied Defendants' Motions to Dismiss. Judge Roberts concluded that Plaintiff's complaint set forth facts, which, if proven, could establish the existence of a civil conspiracy initiated and carried out in the District of Columbia, and thus venue and personal jurisdiction over the Defendants would be proper.

On July 14, 2003, Defendants moved for summary judgment alleging that (1) venue was not proper in the District of Columbia and the D.C. District Court lacked personal jurisdiction over Defendants; (2) Defendants have qualified immunity as to the federal claims; (3) Defendants have immunity as to the state claims; (4) the use of deadly force was justified. On March 22, 2004, the D.C. District Court granted summary judgment only with respect to Plaintiffs civil conspiracy and stalking claims. Because Plaintiff failed to prove that prima facie case of civil conspiracy or stalking occurred or produced an injury in the District of Columbia, the D.C. District Court concluded that the District of Columbia was therefore an improper venue for Plaintiffs remaining

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[4] The record shows that Plaintiff alleged claims under the Virginia Wrongful Death Act because that is where the decedent was shot and killed and under the Maryland Survival Act because that is where the decedent was domiciled at the time of his death.

claims. Consequently, the D.C. District Court transferred Plaintiff's remaining claims to this Court.

As all motions are ripe and ready for disposition, an Opinion shall now be issued.

DISCUSSION

I. Standard of Review & Qualified Immunity

With regard to Plaintiffs Section 1983 claims, Defendants contend that they are entitled to Summary judgment on qualified immunity grounds. Summary judgment is appropriate when there is no genuine issue of material fact and judgment for the moving party is warranted as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue of material fact arises where evidence exists such that a reasonable jury could find for the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986). When evaluating an assertion of qualified immunity under summary judgment, "the facts are to be taken in the light most favorable to the party asserting the injury." Clem v. Corbeau, 284 F.3d 543, 550-51 (4th Cir 2002)(quotations omitted). As important as it may be to establish the validity of an assertion of qualified immunity, the Court must not skew the summary judgment doctrine from its ordinary operation and must not give "special substantive favor' to the party asserting the immunity. Wilson v. Kittoe, 337 F.3d 392, 397 (4th Cit 2003)(internal quotations omitted). In opposing summary judgment, a party "must do more than simply show that there is some metaphysical doubt as to material facts," but a court should not prevent a case from reaching a jury simply because the court favors one of several reasonable views of the evidence. Abraham v. Raso, 183 F.3d 279, 287 (4th Cir. 1999). In particular, cases that turn crucially on determinations of witnesses' credibility should not be resolved on summary judgment. Id.

The legal principles governing qualified immunity analysis are well established. The doctrine of qualified immunity seeks to strike a balance between competing social objectives, providing breathing space for the "vigorous exercise of official authority" while at the same time allowing a possibility of redress for victims of officials' abuses. See Butz v. Economou, 438 U.S. 478, 504-06

(1978). Therefore, as against claims under federal law, "governmental officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); See Jones v. Buchanan, 325 F.3d 520, 531 (4th Cir. 2003)(declaring that "qualified immunity operates to ensure that before [governmental actors] are subject to suit, officers are on notice that their conduct is unlawful"). Because qualified immunity is "an immunity from suit rather than a mere defense to liability," the qualified immunity inquiry must be resolved by the trial judge at the earliest possible stage in litigation. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

The Supreme Court has recently clarified that in excessive force cases, as in all other cases, entitlement to qualified immunity is a two step inquiry, which must be "considered in proper sequence." See Saucier v. Katz, 533 U.S. 194, 200 (2001).[5] Initially, a court must address the threshold question of whether a plaintiff has alleged facts setting forth valid claims for a deprivation of a constitutional right. Id. at 201; see also Williams v. Hansen, 326 F.3d 569, 574 (4th Cir. 2003). Then, if Plaintiffs' constitutional claims survive this threshold review, the court must determine whether that right was clearly established at the time of its alleged violation so that a reasonable person would have known of its violation. Williams, 326 F.3d at 574. In this second inquiry, the appropriate consideration is whether a reasonable officer could have believed that his conduct was unlawful. See Wilson v. Lane,

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[5] Plaintiff contends that qualified immunity is not available in an excessive forte context because liability forte excessive force and the availability of qualified immunity both depend upon the same finding of objective reasonableness. This Court cannot agree. Plaintiff fails to points to a single Fourth Circuit case to support his position. Quite the contrary, the Fourth Circuit has stated flint a finding on the merits of an excessive force claim effectively resolves the question of qualified immunity. Rowland v. Perry, 41 F3d 167, 173-74 (4th Cir. 1994)(finding that qualified immunity is available as a defense against an excessive force claim and "the immunity test and the test on the merits both rely on an objective appraisal of the reasonableness of the force employed").

526 U.S. 603, 615 (1999). If so, then the officer enjoys immunity.

II. Qualified Immunity of Shooter Officer Jones

The threshold question here is whether "taken in the light most favorable to the party asserting the injury," the facts show that Defendants' conduct violated a constitutional tight." Saucier, 533 U.S. at 201. Plaintiff argues that the facts, considered in the light most favorable to the estate, demonstrate that Defendants violated the decedent's constitutional rights.[6] Defendants maintain, however, that they are entitled to qualified immunity as to Plaintiff's federal claims because their conduct constitutes no violation of the decedent's constitutional rights. Because there is a genuine issue as to whether Officer Jones unreasonably used excessive forte against the decedent, the Court denies summary judgment as to Officer Jones.

The right Plaintiff alleges was violated here is the decedent's Fourth Amendment right to be free from unreasonable seizures, a right which includes seizures accomplished by excessive force. Jones v. Buchanan, 325 F.3d 520, 527 (4th Cir. 2003). To state a claim for excessive force as an unreasonable seizure under the Fourth Amendment, a plaintiff must show that a seizure occurred and that it was unreasonable. Brower v. County of Inyo, 489 U.S. 593, 599 (1989). The decedent was obviously seized when he was shot by Officer Jones. As the Supreme Court recognized in Tennessee v. Garner, "there can be no question that apprehension by the use of deadly force is a seizure subject to the

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[6] Plaintiff also argues that Officer Jones conduct was not clearly established under the law of defense pursuant to Virginia state law. Plaintiffs reliance on Virginia state law is misplaced. The Fourth Circuit has stated that "in a civil suit for damages arising out of an official's allegedly unconstitutional action that the problem is not whether state law lies been violated but whether an inhabitant of a State has been deprived of a federal right by one who acts under color of state law." United States v. Van Metre, 150 F.3d 339, 347 (4th Cir.)(quoting Screws v. United States, 325 U.S. 91, 108 (1945)(plurality opinion)); see also Street v. Surdyka, 492 F.2d 368, 371 (4th Cir. 1974)(holding that even if the officer "violated Maryland [state law], be cannot be liable under section 1983 unless he also violated die federal constitutional law").

reasonableness requirement of the Fourth Amendment." 471 U.S. 1, 7 (1985). Hence, the pivotal question here is whether Officer Jones's use of deadly force was reasonable.

A claim that officers violated the Fourth Amendment by using excessive force during a seizure must be analyzed under a standard of "objective reasonableness." Graham v. Connor, 490 U.S. 386, 397 (1989). Hence, the Constitution does not permit an officer to use deadly force unless, when based on the "totality of the circumstances," a reasonable officer similarly situated would have bad "probable cause to believe it necessary to protect himself or others from a significant treat of death or serious physical." Garner, 471 U.S. at 3.

In determining whether force was excessive, the reviewing court must perform a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." Graham, 490 U.S. at 399 (internal quotations marks omitted). Because "police officers am often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving," the facts must be evaluated from the perspective of a reasonable officer on the scene, and the use of hindsight must be avoided. Id. at 396-97. Additionally, the Fourth Circuit has reminded district courts that "reasonableness is determined based on the information possessed by the officer at the moment that force is employed." Waterman v. Batton, 393 F.3d 471, 477 (4th Cir. 2005).

Applying those principles to this case, the Court must discern whether the record, viewed in the light most favorable to Plaintiff, shows that Officer Jones's shooting of the decedent constituted an unreasonable seizure under the Fourth Amendment. As Defendants argue only that the use of deadly force was justified because Officer Jones had probable cause to believe that the driver of the black Jeep Cherokee posed a risk of death or significant physical injury to Officer Jones — as opposed to posing a threat to the general public — the Courts analysis is confined to that issue. Additionally, it is undisputed that all of Officer Jones's sixteen shots were fired during the ramming, and that no shots were fired after the decedent drove away. Thus, the Court's inquiry is essentially the following: whether a reasonable jury could

conclude, based on the evidence forecast in the record, that a perception by Officer Jones that the decedent posed a treat of serious physical harm to him would have been unreasonable.

Based on the current record, Officer Jones's account of what he perceived immediately before he shot the decedent is not sufficient to support a dispositive finding of qualified immunity. It is undisputed that Officer Jones has no recollection of the actual shooting of the decedent. However, the parties do dispute, and offer radically different versions of, what occurred immediately prior to the shooting. Defendants claim that Officer Jones had probable cause to believe death or serious injury was imminent. Based on the deposition testimony of Officer Jones, Defendants contend that immediately prior to the shooting, the decedent's vehicle was placed in reverse with "engine racing and tires smoking," and "intentionally and forcibly rammed" into Officer Jones's vehicle squarely at the driver's side door "multiple times." The evidence that Defendants claim is uncontradicted, however, comes for the most part from the interested witness himself.[7]

Plaintiff on the other hand, submits that Officer Jones's own testimony contradicts a finding of summary judgment. In his deposition, Plaintiff points out that Officer Jones also states that:

> [The decedent] pulled forward again and reverse lights came on, and the last recollection I have was reverse lights coming on and the vehicle coming back towards me. And when I gathered myself or my next recollection, I was in my seat and I was looking over my weapon and my slide was locked

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[7] This Court is particularly cautious in granting summary judgment solely on the testimony of Officer Jones. As the Fourth Circuit has recognized, "since the victim of deadly force is unable to testify, courts should be cautious on summary judgment to 'ensure that the officer is not taking advantage of the fact that the witness most likely to contradict his story — the person shot dead — is unable to testify.'" Abraham, 183 F.3d at 294. Hence, rather than simply accepting the self-serving account of Officer Jones, the Court has also considered whether circumstantial evidence, if believed, would tend to discredit Officer Jones's testimony and convince a rational fact finder that Officer Jones acted unreasonably.

> to the rear and there was glass settling in my hair on the seat and across my entire front seat, and the driver sat up and drove away. I remember thinking Oh, shit, what just happened, figuring, fuck, I've just been in a shooting.

Thus, Plaintiff's evidence shows that Officer Jones could not recall the actions immediately prior to the shooting. Rater, Plaintiffs evidence shows that Officer Jones could merely recall that at some point in time, prior to him emptying sixteen shots at the decedent "reverse lights coming on" and a "vehicle coming back towards [him.]" As Officer Jones cannot recall the events immediately prior to the shooting it is unclear from the summary judgment record whether his perceptions that the decedent's vehicle posed a danger were observed immediately prior to the shooting, or some time thereafter.

In short the resolution of these conflicting versions is the ultimate fact finding issue in this case. The Fourth Circuit has cautioned district courts that "[w]hen the resolution of a case depends on determining what actually happened, the issue is inappropriate for resolution by summary judgment." Vathekan v. Prince George's County, 154 F.3d 173, 179 (4th Cir. 1998). This is because "disputed facts are treated no differently in this portion of the qualified immunity analysis than in any other context" Id. at 180. Therefore, as genuine issues exist regarding a material fact — Officer Jones's perceptions of the actual events immediately prior to the shooting — this Court concludes that summary judgment on qualified immunity grounds is improper at this stage.

Consequently, summary judgment for individual Defendant Officer Jones as to the excessive force claims is denied.

III. Qualified Immunity of Non-Shooters: Officer Bailey & Chief Farrell

Defendants seek dismissal of the claims against the non-shooting officers — Officer Bailey and Chief Farrell. Defendants claim that Officer Bailey and Chief Farrell are entitled to qualified immunity because "neither were involved in the shooting or any other act which violated the rights of Prince Jones."

In Plaintiff's complaint be alleges that Officer Bailey violated the decedent's Fourth Amendment rights and wrongfully used excessive force against the decedent. This Court cannot agree. Taking the facts in the light most favorable to the Plaintiff, the record does show that Officer Bailey did in fact take part in the surveillance of the decedent's vehicle. Nevertheless, the record clearly shows that Officer Bailey was not on the scene when the shooting occurred. Hence, the Court cannot conclude that Officer Bailey caused Officer Jones to violate the decedent's Fourth Amendment rights nor use excessive force against the decedent.

Plaintiff also claims that Officer Bailey and Chief Farrell are liable on a theory of supervisory liability. Specifically, Plaintiff claims that Officer Bailey ordered Officer Jones to take part in this tragedy as Officer Bailey had a continuing dialogue with him throughout the surveillance. Plaintiff also claims that Chief Farrell's actions were deliberately indifferent because, prior to the shooting of the decedent, he allowed Carlton Jones to remain as a police officer despite knowledge of misconduct. This Court cannot agree.

Supervisory liability claims cannot attach if a defendant merely failed to act or prevent a constitutional deprivation. The elements of supervisory liability are: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a "pervasive and unreasonable risk" of constitutional harm; (2) the supervisor's response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization" of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by Plaintiff. Randall v. Prince George's County, 302 F.3d 188, 206 (4th Cir. 2002). A plaintiff may establish deliberate indifference by demonstrating a supervisor's "continued inaction in the face of documented widespread abuses." Shaw v. Stoud, 13 F.3d 791, 799 (4th Cir. 1993).

Plaintiff's argument that Officer Bailey is supervisory liable for ordering Officer Jones to take part in the surveillance and the two officers maintained dialogue throughout fails the first prong of supervisory liability. Although Officer Bailey and Officer Jones were communicating via cell phone, during the

surveillance, the evidence is undisputed that the two officers were not in communication during the actual shooting. Moreover, there is no evidence indicating that Officer Bailey possessed any knowledge, constructive or actual, that Officer Jones would shoot the decedent. Because the record shows that Officer Bailey's involvement in this tragedy is limited to merely conducting surveillance, Plaintiff has failed to show that Officer Bailey's actions implicate the deprivation of a constitutional right. Hence, the Court concludes that Officer Bailey is entitled to qualified immunity because Plaintiff has not shown that Bailey caused a deprivation of the decedent's constitutional rights.

Chief Farrell is also entitled to qualified immunity. Plaintiff contends that prior to Officer Jones's shooting of the decedent Farrell knew of a single incident where Officer Jones had been found guilty of a false statement. The Fourth Circuit has clearly held that a single or isolated incident of misconduct by a police officer does not establish deliberate indifference. Randall, 302 F.3d at 206 (stating that "a plaintiff ordinarily cannot satisfy his burden of proof by pointing to a single incident or isolated incidents" to establish a claim of deliberate indifference). Rather than demonstrating widespread of pervasive conduct, Plaintiff's claim deals with one prior disciplinary finding unrelated to the issue of excessive force. Hence, Chief Farrell's mere knowledge of one prior disciplinary finding of misconduct cannot constitute deliberate indifference.

Even assuming a single act is sufficient, Plaintiff still cannot demonstrate that Chief Farrell's actions constitute deliberate indifference. Plaintiff fails to show any evidence that Chief Farrell's "corrective inaction amounts to deliberate indifference or tacit authorization of the offensive practices." Slaken v. Porter, 737 F.2d 368, 373 (4th Cir. 1984). Here, the alleged misconduct is a prior disciplinary finding of making a false statement in violation of department regulations and a recommended discipline. The record does not show that this is a case where Chief Farrell failed to act after learning of the misconduct. Instead, the record shows that Chief Farrell concurred with the punishment recommended by the Administrative Hearing Board, and that discipline was implemented. Although Chief Farrell failed to terminate Officer Jones for the single false statement incident, the Court cannot find that the discipline

implemented constitute deliberate indifference when the record clearly shows that some form of discipline was implemented. Thus, although Chief Farrell's conduct may not have been the most effective remedy, the record does not show that he turned a blind eye to a risk. See Baynard v. Malone, 268 F.3d 228, 236 (4th Cir. 2001)(stating that to constitute deliberate indifference, "actions that are in hindsight 'unfortunate' or even 'imprudent' will not suffice"). Therefore, the Court cannot find that Chief Farrell's actions arise to the level of gross deliberate indifference.

In short, because this Court concludes that neither Officer Bailey nor Carlton Jones violated a constitutional right of the decedent, the Court need not proceed any further in the qualified immunity analysis. See Wilson, 609 U.S. at 609.

IV. Monell Claims

Defendants also claim that PG County is entitled to qualified immunity on the Plaintiff's Monell claims. A municipality, like PG County, may not be held vicariously liable under Section 1983 for the constitutional violation of an employee merely because of the existence of an employment relationship. Monell v. Dept., of Social Servs., 436 U.S. 658, 692-94 (1978). Rather, under Monell and its progeny, PG County could be subject to Section 1983 liability only when "it causes a deprivation through an official policy or custom." Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999). A government policy or custom need not have received formal approval through the municipality's official decision-making channels to subject the municipality liability. Riddick v. Sch. Bd, 238 F.3d 518, 522 (4th Cir. 2000). Rather, when an alleged constitutional deprivation is caused by the official actions of those individuals "whose edicts or acts may fairly be said to represent official policy," the government as an entity is responsible under Section 1983. Id.

A. Policy permitting officers to cross jurisdictional boundaries

Plaintiff first argues that PG County was deliberately indifferent for allowing its police officers to venture into neighboring jurisdictions without notification. To impose Section 1983 liability on a municipality, a claimant must first show that "a municipal decision reflects deliberate indifference to the risk that a

violation of a particular constitutional or statutory right will follow the decision." Riddick, 238 F.F.3d at 524. The standard of establishing "deliberate indifference" is a heavy burden, requiring the plaintiff to show that the municipality disregarded a known or obvious risk that the policy would lead to the deprivation of federal rights. Cain v. Rock, 67 F.Supp.2d 544, 550 (D. Md. 1999)(citing Bd. of County Comm'rs v. Brown, 520 U.S. 397, 410 (1997)). Here, the record contains no evidence of indifference by the County with regard to its official policies. To the contrary, the record shows that PG County permits its non-uniformed police officers to travel outside the jurisdiction without notification only if there is no intent to commit overt police action. For example, while conducting investigations in neighboring jurisdictions, PG County prohibits its officers from undertaking overt actions such as arrests or seizures of evidence. As a caveat to this policy, PG County does permit officers to take appropriate actions in situations where an officer must protect him or herself from harm.

Additionally, Plaintiff has failed to present any evidence that the policy, which allows for overt police actions outside of the relevant jurisdiction only in emergency situations, is illegal. Moreover, Plaintiff has produced no evidence of other police departments that prohibit officers from crossing jurisdictional boundaries under similar circumstances. Quite the contrary, other jurisdictions such as the District of Columbia and Virginia also allow their officers to engage in the challenged practice. Therefore, the Court rejects Plaintiff's claim that PG County demonstrated deliberate indifference in allowing officers to travel to other jurisdictions.

B. Failure to take action against officers engaging in excessive force

Next, Plaintiff contends that PG County, through the actions of Chief Farrell, had a deficient policy of failing to take action against police officers who file false police reports or who engage in acts of excessive force.[8] As stated above, the Court has

[8] Insofar as Plaintiff alleges that PG County made false representations that officers Bailey and Jones were working on a legitimate police investigation, this claim has no merit. The

already concluded that Chief Farrell has qualified immunity for Officer Jones's false statements.

As for PG County's liability for the excessive force claims, Plaintiff argues that Chief Farrell was a final policymaker for PG County for purposes of setting PG County policy. Plaintiff specifically points to the fact that Chief Farrell promoted Officer Jones to a supervisory position while an investigation into the shooting of the decedent alleged herein was currently ongoing.

A "final policymaker" for purposes of municipal liability is someone who has "the responsibility and authority to implement final municipal policy with respect to a particular course of action." Lytle v. City of Norfolk, 326 F.3d 463, 472 (4th Cir. 2003). The Fourth Circuit had emphasized that the examination of state law allows for consideration of whether policymaking authority in fact rests where state law has placed it." Id.

The Fourth Circuits s decision in Crowley v. Prince George's County, 890 F.2d 683 (1989) is instructive here. In Crowley, the Fourth Circuit rejected Plaintiff's claim that a personnel decision of the Prince George's County police chief to downgrade the position of an employee, constituted final policymaking authority, and thus represented the official policy of Prince George's County. 890 F.2d at 684. After applying state law, the Fourth Circuit found that, pursuant to Prince George's County Charter the City Council and the County Executive were authorized to establish and administer a personnel system. Id. at 686. Nothing in the Charter bestowed on the police chief any type of policymaking authority concerning personnel matters. Id. Hence, the Fourth Circuit held that, although the police chief was a personnel decision-maker, he was not a policymaker for the purposes of municipal liability. Id.

In so concluding, the Fourth Circuit indicated that even if the police chief retaliated against the employee, such conduct would not prove any unconstitutional municipal policy. Specifically, the Fourth Circuit noted that the employee did not contend that Prince George's County has ever had a policy of

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Court's review of the record clearly shows that an investigation occurred.

retaliating against its employees, and that he did not prove that such retaliation was ever directed at anyone other than himself. Id. Nor did the employee offer any evidence that policymaking authority over personnel matters were delegated to the police chief, or that the county had a custom of harassing persons who publicized racial harassment. Id.

The scenario in the instant case is analogous to that posed by the Fourth Circuit in Crowley. Here, Plaintiff has failed to point to any persons, other than the decedent, who were similarly subjected to excessive force. Nor has Plaintiff offered any proof that policymaking authority over personnel matters was delegated to the police chief, or that the county had a custom of excessive force. Furthermore, although Plaintiff alleges that Prince George's County has had a policy of excessive force, the only proof that Plaintiff offers are various newspaper articles, and this evidence is insufficient to show that Prince George's County maintains a policy of excessive force. Such hearsay items only demonstrate that PG County was on notice of allegations of excessive force by its officers. Therefore, the Court concludes that Plaintiff fills to show that Prince George's County has municipal liability for its alleged policy of inaction with respect to excessive force claims.

C. Failure to Adequately Train

Plaintiff also argues that PG County should be liable because it exhibited deliberate indifference to the decedent's rights by failing to adequately train officers claim. Again, this Court cannot agree.

The manner in which a municipality chooses to train its police force is "necessarily a matter of policy." Spell v. McDaniel, 824 F.2d 1380, 1389 (4th Cir. 1987). Section 1983 liability may attach if officers are not adequately trained "in relation to the tasks the particular officers must perform." Lytle, 326 F.3d at 473 (citing Canton v. Harris, 489 U.S. 378, 390-91 (1989)).

As applied here, Plaintiff points to the deposition of its expert witness, Robert Klotz, who opines that deficiencies existed in the PG County Police Department's "shoot/no shoot" judgmental training program. The Court's review of the record, however, shows that ever since 1998 PG County had been using a

training program called Range 2000. Indeed, it is undisputed that at the time of the decedent's death in September of 2000, the County no longer used the "shoot/no shoot" program that is the basis of Plaintiffs expert's opinion testimony. Furthermore, the only evidence in the record regarding the relevant training indicates that Prince George's training of its officers complies with national standards. Consequently, the Court concludes that Plaintiff has failed to demonstrate that the training program utilized by PG County at the relevant time caused the decedent's death.

V. State Tort Claims Officers Jones and Bailey

With regard to the survival, wrongful death, assault and battery, and intentional/negligent infliction of emotional distress claims against Officers Jones and Bailey, Plaintiff is required to prove a wrongful act. McLenagan v. Karnes, 27F.3d 1002, 1009 (4th Cir. 1994) (citing Pike v. Eubank, 197 Va. 692 (1956).[9] A wrongful act imports lack of justification or excuse. Id. Because Officer Bailey was not involved in the shooting, his actions are justified under the circumstances and that no reasonable minds could differ on the question. Hence, as Plaintiff's claim lacks any merit as to Officer Bailey, he is therefore entitled to summary judgment on the common law claims.

With respect to Officer Jones, however, the Court hereby denies summary judgment on the aforementioned common claims. Defendants' sole basis for moving for summary judgment in favor of Officer Jones, as to the common law claims, is based on the lack of a wrongful act, i.e. Officer Jones was justified in using deadly force against the decedent. As the Court's discussion on qualified immunity indicates, Plaintiff has presented a genuine issue of material fact as to whether Officer Jones reasonably perceived the

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[9] The Court notes that Virginia substantive law applies to the common law claims against Officer Jones, as the wrongful acts, i.e., the police shooting, occurred in Virginia. See Jones v. Prince George's County, 378 Md. 98, 107-08 (Md. 2003)(stating that "the place of the wrongful act, and not the place of the wrongful death, [] determines the substantive tort law to be applied in a particular wrongful death action."). Also, to the extent that Plaintiffs seeks to hold Officer Bailey vicariously liable, under the doctrine of respondeat superior, for Officer Jones's alleged tortious acts. Id.

use of deadly force was justified.

VI. State Tort Claims against Chief Farrell and PG County

Next, Defendant argues that PG County and Chief Farrell are entitled to summary judgment on Plaintiff's common law negligent supervision claim. The Court agrees.

A state's right to governmental immunity is "deeply ingrained in Maryland law" and may not be waived in the absence of express or implied statutory authorization. Vincent v. Prince George's County, 157 F.Supp.2d 588, 595 (D. Md. 2001); see also Nam v. Montgomery County, 127 Md. App. 172,182 (1999). A municipality, such as PG County, is also entitled to governmental immunity. Nam, 127 Md. App. at 183 ("When the state gives a city or county part of its police power to exercise, the city or county to that extent is the state."). Specifically, municipalities are generally immune from common law tort suits when engaged in governmental, as opposed to proprietary, acts. Id. The operation of a police force is a governmental function. Hector v. Weglein, 558 F.Supp. 194, 206 (1982)(citations omitted). Thus, PG County is immune as to common law tort claims asserted against it based on torts committed by its police officers. See Williams v. Prince George's County, 112 Md. App. 526, 532 (1996)(holding that the County was shielded by governmental immunity when tort claims were asserted against it in its individual capacity as for torts allegedly committed by County officers).[10]

Similarly, in his official capacity, Chief Farrell is shielded by PG County's governmental immunity. Vincent, 157 F.Supp.2d at 595 n4 (explaining that the Prince George's County police chief

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[10] The negligent supervision claim against PG County and Chief Farrell are governed by Maryland substantive tort law. See Farwell v. Briggs, 902 F.2d 282, 287 (4th Cir. 1990); see also Jones, 378 Md. at 107-08 (Md. 2003). Nevertheless, the Court also notes that Virginia recognizes immunity for this type of claims against a local government and governmental official. See Niese v. City of Alexandria, 264 Va. 230, 239 (2002) (recognizing immunity of government for governmental functions); Messine v. Burden, 228 Va. 301, 312-13 (1984) (recognizing immunity for county officials).

is entitled to the same immunity as the municipality with respect to common law claims asserted against them). Here, Plaintiff alleges that Chief Farrell was negligent in his official act of supervising PGCPD officers. Thus, Chief Farrell is also entitled to immunity on Plaintiffs common law claims.*

CONCLUSION

For the aforementioned reasons, Defendants' Motion for Summary Judgment is GRANTED-IN-PART, and DENIED-IN-PART. With respect to individual Defendants Officers Bailey, Chief Farrell, and PG County, the Court hereby enters summary judgment as to Plaintiffs federal and state law claims. As pertains to Officer Jones, the Court hereby denies summary judgment on Plaintiff's federal and state law claims. In particular, the Court concludes that because genuine issues of material fact exist regarding Officer Jones's perceptions of the actual events immediately prior to the shooting, summary judgment on qualified immunity grounds is improper at this stage of the proceedings. Therefore, the Court will proceed to set this matter in for trial with respect to Officer Jones. A separate Order shall follow.

April 28, 2005
Date

/s/
Alexander Williams, Jr.
United States District Judge

* Hence, although the acts complained of by Plaintiff, against Chief Farrell and PG County, related to acts performed in Maryland, the Court also recognizes that such acts would fail even under the state law of Virginia, *i.e.* the place of the shooting.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

MABEL S. JONES, individually, as the next best friend of and Personal Representative of the Estate of Prince Carmen Jones, Sr.,

Plaintiff

v. Civil Action No. AW-04-3044

CANDACE JACKSON, mother, and next friend, and individually and as co-legal custodian of Nina Amayye Eden Chi Jones, a minor; PRINCE CARMEN JONES, SR, co-legal custodian of Nina Amayye Edden Chi Jones, a minor,

Plaintiffs-Intervenors,

v.

PRINCE GEORGE'S COUNTY, MD, *et al.*,

Defendants.

ORDER

For the reasons stated in the accompanying Memorandum Opinion dated April 28th, 2005 and, IT IS this 28th day of April, 2005, by the United States District Court for the District of Maryland, hereby **ORDERED**:

1. That Defendants' Motion for Summary judgment [93] BE, and the same hereby **IS, GRANTED-IN-PART, AND DENIED-IN-PART**;

2. That with respect to individual Defendants Officers Bailey, Chief Farrell, and PG County, the Court hereby **GRANTS** summary judgment as to Plaintiffs federal and state law claims;

3. That with respect to individual Defendant Carlton Jones, the Court hereby **DENIES** summary judgment on Plaintiffs federal and state law claims. In particular, the Court concludes that, because genuine issues martial fact exist regarding individual Defendant Carlton Jones's perceptions of the actual events immediately prior to the shooting, summary judgment on qualified immunity grounds is improper at this stage of time.

4. The Parties are directed within five (5) days of this Order to initiate a Joint Trial Scheduling Conference to set a trial date. Unless the Court hears from the parties, per the Court's instructions, the Court will set a trial date; And

5. That the Clerk of the Court shall transmit copies of this Memorandum Opinion & Order to all parties and counsel of record;

/s/
Alexander Williams Jr.
United States District Judge